

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 5847 of 1997****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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SHAKUNTALADEVI WIDOW OF GIRJA RAMDEV RAWAT - Petitioner(s)
Versus
AIR FORCE COMMANDING & 2 - Respondent(s)

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Appearance :

MR HA PANIWALA for Petitioner(s) : 1,
MR RJ OZA for Respondent(s) : 1 - 2.
MS PJ DAVAWALA for Respondent(s) : 3,
MS PROMILA SAFAYA for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 16/01/2007****ORAL JUDGMENT**

By way of this petition, the petitioner widow of Girja Ramdev Rawat who was at the relevant time serving as a cook in the Air Force

Mess, who has unfortunately died on 13-11-1995, has prayed for an appropriate order of compensation by way of interim relief .

2. It is the allegation in the petition that the deceased workman (cook) who was serving in the Air Force Mess was arrested, detained without any authority by a search party of 12 Air Force Men and detained and beaten to death on 13-11-1995. It is submitted that under the Air Force Act, the deceased was a civilian and the respondents had no authority to arrest or to interrogate the deceased, even if the deceased was an accused and still he was arrested illegally and beaten to death. Relying upon the observations of the Hon'ble Supreme Court in the case of D.K. Basu V. Ashok K. Johri reported in (1) 1997 CCR 81 SC, it is requested for an appropriate order to pay the compensation to the widow of the deceased by way of interim relief for custodial death of the deceased Shri Rawat.

3. Petition is opposed by the respondents. An affidavit-in-reply is filed on behalf of the respondents. The allegations in the petition are totally denied. It is further submitted that this is not a fit case, wherein this Court may exercise its writ jurisdiction under Article 226 of the Constitution of India in as much as the petition raises disputed question

of facts which cannot be determined in the present proceedings. It is also further submitted that the allegation of the custodial death of deceased Shri Rawat is specifically denied and the issues with regard to unnatural death of Girija Ramdev Rawat is still to be determined in the Sessions Case No.28 of 1997 pending in the Sessions Court at Jamnagar. Shri RJ Oza, learned Central Government Standing Counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Subesingh V. State of Haryana** and others reported in (2006) 3 SCC 171, more particularly, para 46 and it is submitted that in the facts and circumstances of the present case, whether it was a custodial death and who was responsible for that is yet to be determined by the competent criminal Court in the pending criminal case and therefore, the petitioner should be relegated to approach the civil Court and/or appropriate forum.

4. The learned advocate appearing on behalf of the petitioner is absent though the matter is called out twice today. Earlier, also none of the occasions, the learned advocate appearing on behalf of the petitioner has remained absent. However, considering the facts and circumstances of the case, this Court has decided the matter and has gone through the

pleadings as well as the affidavit-in-reply filed on behalf of the respondents.

5. It is not in dispute that a criminal case being Sessions Case No.28 of 1997 is pending before the learned Sessions Court at Jamnagar and cause for the unnatural death of the deceased employee is yet to be determined by the competent criminal Court. Alongwith the petition, no supporting material such as medical certificate etc. are produced. The Hon'ble Supreme Court in the case of Sube Singh (supra) in para 46 has observed as under:

“In case whether custodial death or custodial torture or other violation of the rights guaranteed under Article 21 is established, the courts may award compensation in a proceeding under Article 32 or 226. However, before awarding compensation, the Court will have to pose to itself the following questions : (a) whether the violation of Article 21 is patent and incontrovertible, (b) whether the violation is gross and of a magnitude to shock the conscience of the Court, (c) whether the custodial torture alleged has resulted in death or whether custodial torture is supported by medical report or visible marks or scars or disability. Where there is no evidence of custodial torture of a person except his own statement, and where such allegation is not supported by any medical report or other corroborative evidence, or where there

are clear indications that the allegations are false or exaggerated fully or in part, the courts may not award compensation as a public law remedy under Article 32 or 226, but relegate the aggrieved party to the traditional remedies by way of appropriate civil/criminal action.”

Now considering the facts of the case on hand, there is no evidence of custodial torture of a person except the statement of the petitioner who has no personal knowledge. Allegations which are made in the petition are not supported by any medical report or other corroborative evidence . Under the circumstances and considering the judgment of the Hon'ble Supreme Court in the case of Sube Singh (supra), this is not a fit case in which the petitioner can be awarded interim compensation. However, this order will not come in the way of any civil Court awarding compensation in an action in tort or the criminal Court awarding compensation under Section 357 CrPC in the pending prosecution which is by way of Sessions Case No.28 of 1997 pending in the Court of learned Sessions Court, Jamnagar.

6. With the above observation, the present Special Civil Application is dismissed. Rule discharged. No costs.

(M.R.SHAH,J.)

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